HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Misc. Application No.164 of 2006

Maan Singh and four others
R/o village Manoor
Patwari Circle Narainbagar
Tehsil Tharali, District Chamoli .....Applicants

Versus

1. State
2. Ram Singh
   S/o Shri Uday Singh
   R/o village Manoor
   Patwari Circle Narainbagar
   Tehsil Tharali
   District Chamoli ....Respondents

Dated :- 10.03.2006

Hon'ble J. C. S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 28.5.2005 and judgment & order dated 18.2.2006 (Annexure 4 & 5 to the petition) passed by the Judicial Magistrate, Karanprayag, District Chamoli and the Sessions Judge, Chamoli respectively. It has also been prayed to quash the proceedings of criminal case No.131/2005 Ram Singh Vs. Maan Singh & others under sections 504 & 506(2) IPC pending before the Chief Judicial Magistrate, Karanprayag, District Chamoli.

2) Brief facts of the case are that on 25.2.2005 the respondent No.2-Ram Singh filed a complaint under section 504 & 506(2) IPC before the learned Magistrate against the applicants alleging therein that there is a dispute between the respondent No.2 and applicants with regard to the construction of a wall under which a proceeding under section 145 Cr.P.C. & section 107/116 Cr.P.C. is pending before the Sub-Divisional Magistrate, Tharali, District Chamoli. It was further alleged that

when the respondent No.2 was going to his house nearby the house of the applicants. On the way, the applicants met him and threatened to kill him and also abused him. After hearing the hue and cry, his younger brother Manwar Singh and one Balwant Singh came to the spot and saved the life of respondent No.2. Thereafter, he went to Patwari Chowkil but the Patwari was not available in the Chowki. Thereupon, the respondent No.2 has filed the complaint before the learned Magistrate. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicants under section 504 & 506(2) IPC for facing the trial vide order dated 28.5.2005. Feeling aggrieved by the order of Magistrate, the applicants preferred a revision before the Sessions Judge and the same was dismissed vide order dated 18.2.2006. Feeling aggrieved by both orders, the present petition has been filed.

3) The learned counsel for the applicants contended that there is a dispute pending between the parties with regard to the construction of wall under section 145 Cr.P.C. and section 107/116 Cr.P.C. It was contended that the complaint filed by the respondent No.2 is only a counter-blast of the aforesaid wall dispute. Perusal of the record reveals that the complainant has examined himself under section 200 Cr.P.C. and his brother Manwar Singh was examined under section 202 Cr.P.C. The Magistrate has not put any questions to the witnesses with regard to the proceedings under section 145 Cr.P.C. and section 107/116 Cr.P.C. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the

Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicants has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705,** in which it has been held as under:

> "*Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.*"

4) The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

5) In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The Magistrate should have put the question to the complainant and his witnesses to know the veracity of the incident. It is also admitted case that there is litigation under sections 145 Cr.P.C. and section 107/116 Cr.P.C. pending in between the parties. The Magistrate should have asked the complainant to produce the documents with regard to the said dispute. He should have put the questions with regard to the litigation also. The Magistrate should have seen the corroborative evidence.

6) Therefore, the summoning order dated 28.5.2005 and judgment & order dated 18.2.2006 (Annexure 4 & 5 to the petition) passed by the Judicial Magistrate, Karanprayag, District Chamoli and the Sessions Judge, Chamoli respectively are set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

7) The petition is disposed of accordingly.

(J. C. S. RAWAT, J.)

Dated 10.03.2006

LSR